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C O N F I D E N T I A L SECTION 01 OF 04 TASHKENT 000959

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DEPARTMENT FOR INL ANDREW BUHLER AND DRL FOR RACHEL WALDSTEIN
DEPARTMENT OF JUSTICE FOR CATHERINE NEWCOMBE
AMEMBASSY HELSINKI PASS TO AMCONSUL ST PETERSBURG
AMEMBASSY MOSCOW PASS TO AMCONSUL VLADIVOSTOK
AMEMBASSY MOSCOW PASS TO AMCONSUL YEKATERINBURG
AMEMBASSY BELGRADE PASS TO AMEMBASSY PODGORICA
AMEMBASSY ATHENS PASS TO AMCONSUL THESSALONIKI

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SUBJECT: UZBEKISTAN: NEW ATTORNEY LICENSING EXAMINATION REDUCES
TRANSPARENCY AND INDEPENDENCE FOR BARRISTERS

REF: 08 TASHKENT 741; TASHKENT 915; 08 TASHKENT 1379; 08TASHKENT 1480
08 TASHKENT 1247

CLASSIFIED BY: Timothy P. Buckley, Second Secretary, Department of
State, Political and Economic Section; REASON: 1.4(B), (D)

11. (C) Summary: The newly-established Uzbekistan Chamber of
Lawyers, which supplanted the Bar Association, is conducting its
first round of mandatory new licensing examinations for all defense
attorneys who actively practice in courts of law. Several
attorneys have complained that the testing process is subjective
and nontransparent, which gives government-appointed administrators
an opportunity to weed out defense attorneys who are too willing to
earnestly represent defendants, including human rights activists or
journalists. At least two prominent long-time barristers have
already failed the exam, and others who passed are still unhappy
about the process. The initial testing will not be completed until
July 1, although it seems clear that the controversial exam will
not result in improved qualifications and professionalism as
President Karimov envisioned in last year's decree outlining
systemic reforms. End summary.

Mandatory Testing Now Underway

12. (C) On June 2, poloff met with two prominent defense attorneys,
Rukhiddin Komilov and Rustam Tulyaganov, about the new licensing
exam for admission into the mandatory Chamber of Lawyers, which
supplanted the voluntary but independent Uzbekistan Association of
Lawyers in 2008 (ref A). Both were among the first groups to take
the new exam, which all defense attorneys must take between April
and July 1 or forfeit their license to practice. (Note:
Government lawyers and prosecutors are exempt from the new test, as
are attorneys who do not actively practice in court. Thus, the new
measures primarily affect lawyers who directly defend clients in
court.) Komilov and Tulyaganov were both dismayed but not
surprised that they failed the new test and, while they immediately
filed appeals, neither believes there is any prospect the decision
will be overturned. Komilov said he was the only one of
approximately 50 attorneys at the testing venue in Tashkent that

day to have failed, which he attributed to his willingness to represent activist clients in court. For example, he is presently defending Dilmurod Sayyidov, a journalist in Samarkand who is facing what appears to be weak extortion charges (ref B).

Five Questions, 10 Committee Members, and a Former Strip Club

13. (C) Komilov and Tulyaganov described the testing process, which is an oral exam before a committee of 10 examiners. Five panel members are from the Ministry of Justice and five are "peers," ostensibly from the Chamber of Lawyers. Komilov said there are 275 possible case studies which examiners can choose from at random, but each candidate is given only five scenarios as well as some time to organize verbal arguments. The panel members each assess a candidate on a pass or fail basis, although the results are not accessible and test-takers are unable to discern how the individual panel members assessed them nor are they offered any explanatory comments. Other test-takers reported that there are 1,500 questions in a database as well as nearly 500 more detailed case studies, and there are no study materials available in advance. Furthermore, the questions run the gamut from every branch of law -

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criminal, procedure, civil, labor, family, etc - which makes preparation extremely difficult for a defense attorney who has specialized in one area for many years.

14. (C) Embassy LES Legal Analyst met on June 4 with a group of three lawyers affiliated with the former Tashkent Bar Association, which was abolished by law last year and replaced with the government-controlled Chamber of Lawyers. Their version of the testing process mirrored the experience of Komilov and Tulyaganov, and each believed the test was administered "unfairly." Tamila Rakhmatullaeva, Sayyora Usmanova, and Liliya Vijel all reported being questioned closely because of previous involvement with events run by foreign organizations such as the American Bar Association (ABA), but ultimately each of them passed the exam. The successful candidates nonetheless complained about the lack of transparency among the testing panel members, as no one knew who they were, who appointed them to be examiners, what their credentials were, what decisions they reached, and on what basis. They also felt the testing venue was itself a humiliation for lawyers, as it was a former strip club in a basement with no windows or ventilation for a typical group of 50 examinees.

"It's a Circus, a Theatrical Event"

15. (C) Komilov further described the testing process as "a circus," in which authorities go through the motions and put on a show while hiding their true agenda of weeding out undesirable candidates who do not always toe the official line. He further alleged that the National Security Service (NSS) is actively represented in the review panel and said he overheard some panel members referring to a list of candidates to watch out for. Rakhmatullaeva and Usmanova also believe such a list exists, as they did not know the panel members but were asked provocative questions such as what they thought of the presidential decree, the resolution of the Cabinet of Ministers (which called for the establishment of the Chamber), and whether they evaluated the government's reforms positively. They added that the active questioning came from the Ministry of Justice representatives, whereas the remaining panel members sat

silently and disinterested, as if they were only present to form a quorum. Rakhmatullaeva and Usmanova reported that the panel promptly passed and dismissed many candidates after listlessly asking just one question, thereby saving time for more intensive scrutiny of persons of interest.

Most Will Pass, but the Message is Clear

16. (C) Komilov and Tulyaganov both have a wealth of professional experience and both are alumni of the Tashkent State Law Institute (formerly known as the Law Faculty of the National University), which is considered the most prestigious academic institution in the country for aspiring barristers. Komilov also participated in an International Visitor program in the U.S. and his work on high-profile cases has been documented by emboffs in the past. Despite no advance knowledge of the exam, both seasoned defense counsels felt the content was not difficult and they were confident their answers were articulate and satisfactory. In contrast, Komilov was frustrated watching the other candidates, whom he likened to "a group of fish sitting around passively" and delivering what he thought were poor quality arguments.

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Rakhmatullaeva and Usmanova reported that former head of the Tashkent Bar Association (which was a branch of the Uzbekistan Association of Lawyers) and frequent Embassy contact Gulnara Ishankhanova decided to forfeit her license rather than submit to this exam process. Ishankhanova had actively opposed the abolition of the independent bar association and the establishment of the Chamber of Lawyers (refs A and C).

17. (C) Komilov said he was the only candidate to fail during the April 26 session, and Tulyaganov also stated that all the other test-takers in his group passed besides him. The three successful candidates we spoke with said they thought two or three failed from their group of 50. Thus, while the testing cycle continues until July 1, it appears that the pass ratio will ultimately be 90 percent or higher, which the Government of Uzbekistan through its Chamber of Lawyers may attempt to publicize as a positive outcome. The new testing process came to the attention of Pavel Hatsuk, a Human Rights Advisor at the OSCE's Office on Democratic Institutions and Human Rights (ODIHR), who participated in OSCE-sponsored human rights education workshops in Tashkent on June 4-5. Hatsuk had heard from Uzbek activists that "already hundreds of defense attorneys have failed the exam," which poloff suggested seems inflated. Nonetheless, Hatsuk said it would be equally disconcerting if Uzbekistan was targeting a small and select group of defense attorneys and said his organization would monitor the situation closely.

18. (SBU) Tulyaganov also raised questions about the legality of the new procedures, as he had previously qualified for a lifetime license to practice and there have been no corresponding changes in legislation authorizing the new Chamber of Lawyers to revoke his existing license. He also noted that, while the initial licensing test only must be passed one time under the new test, there will still be other qualification standards and skills testing every five years. This sends even successful test-takers a message that the government will have further opportunities to assess their status. Rakhmatullaeva and Usmanova are also concerned that the Chamber's Disciplinary Commission can suspend any lawyer's license, which reportedly has already happened in one instance in which a defense attorney refused to authorize the Ministry of Justice to conduct an audit of his firm.

Corruption

¶9. (C) Tulyaganov, when asked whether review panel members offered him a chance to change the outcome of the test by offering a bribe, noted that "that would not be possible for me since the goal is to remove me" from the ranks of practicing defense attorneys, which would make him an impossible target. However, Ishankhanova allegedly learned from a friend that she paid a USD 500 bribe to a Zukhra Muzaffarova, a member of the review commission, for her son to pass the exam. Reportedly, this is a discounted rate for acquaintances and the sums demanded for those with marginal skills to pass are higher. (Note: While this allegation is second-hand and reports of bribes can be fueled by rumors, the lack of transparency and objectivity in this testing process could create favorable conditions for such corruption to flourish.)

Did a Well-Intentioned Reform Get Hijacked?

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¶10. (C) President Karimov's decree on May 1, 2008 entitled "On Measures for Further Improvement of the Bar Institution in Uzbekistan" was welcomed by members of the then Uzbekistan Association of Lawyers and Ishankhanova's Tashkent Bar Association as an opportunity to implement meaningful and much-needed reforms on the procedural aspects of Uzbek law. Ishankhanova told us that voluntary bar membership only attracted about 50 percent of the lawyers and left the organization with a weak mandate, so the Chamber of Lawyers idea with mandatory membership is not opposed even by such attorneys as Komilov. We also reported the decree as a positive development in rule of law (ref A) and agree with the stated goals of enhancing professional qualifications of defense attorneys (ref D).

¶11. (C) The Cabinet of Ministers, acting to implement the decree, issued Resolution 112 on May 28, 2008 without input from the legal community and - in contradiction to references to maintaining the bar's independence in Karimov's decree - required that the Chairperson of the new Chamber must be elected at a conference upon the recommendation of the Ministry of Justice. This Chairperson, in turn, appoints the heads of the regional branches, which means that defense lawyers cannot choose the head of their local or national professional organizations. The September 2008 conference to organize the new chamber was government-orchestrated and controlled, and the long-time head of the Uzbekistan Association of Advocates, Bakhrom Salomov, was sidelined and Tashpulat Saidov, the only candidate put forward by the Ministry of Justice, became the Chairperson and began to organize the admission criteria. It is possible that President Karimov really did intend to strengthen the bar association and improve rule of law institutions but that the security services took advantage of the restructuring to ensure maximum control over the ranks and activities of defense lawyers. This may explain why our proposal last summer to fund a training project administered by ABA-ROLI (Rule of Law Initiative) structured closely around the President's decree was rejected, even though we had received positive signals in advance (ref E).

Comment

¶12. (C) The final picture will not be clear until the testing

process is complete, although there is cause for concern that some qualified defense attorneys - who are in short supply in this country - will be squeezed out in what essentially may become a government-controlled vetting process. Just as disappointing is that what was initially seen by defense attorneys and diplomats alike as a chance for meaningful reform may in part be squandered, although even the disaffected lawyers were still pleased by the December 2008 law which increased protections for defendants, lawyers, and witnesses. Komilov and Tulyaganov stated that "only in international fora can this situation be remedied;" although they turned already to the International Bar Association, our best step may be to quietly approach the American Bar Association to suggest an assessment of Uzbekistan's new rules for licensing defense attorneys.

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